PERBADANAN SETIAUSAHA KERAJAAN SELANGOR & ORS

v.

METROWAY SDN BHD & ANOR & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
MOHD SAARI YUSOFF JCA
MOHD GHAZALI YUSOFF JCA
[CIVIL APPEAL NOS: W-02-864-2002 & W-02-852-2002]
21 MAY 2003

CIVIL PROCEDURE: *Injunction - Interlocutory injunction - Appeal against grant of - Principles and considerations - Whether damages an adequate remedy - Whether specific relief an appropriate remedy - Whether agreement to develop land for profits confers caveatable interest in land*

The 1st appellant, a state-owned corporation, entered into a joint-venture agreement ('JV1') with the respondent to develop certain lands belonging to 1st appellant into a housing estate. The objective of JV1 was for the two parties to share in the proceeds of the sale of the houses that were to be constructed on the said lands. Subsequently, however, disputes arose between the two parties, and the 1st appellant appointed the 2nd appellant, pursuant to a new joint-venture agreement ('JV2'), to carry on with the development project. Aggrieved, the respondent instituted proceedings in the High Court against the 1st and 2nd appellant, seeking, *inter alia*, specific performance of JV1. Pending the trial of its action, the respondent sought and obtained an interlocutory injunction against the appellants. The instant appeals by the appellants were directed against the grant of the said injunction.

Held:
Per Gopal Sri Ram JCA

[1] JV2 was not, *prima facie*, liable to be set aside even if it amounted to a conspiracy to injure the respondent as it had alleged. Conspiracy is an actionable tort; the remedy is damages. Unless there are exceptional circumstances, specific relief is generally declined by a court of equity where monetary compensation is an adequate remedy. Moreover, JV1 was not an agreement conferring a caveatable interest in land. (pp 342 g - 343 a-g)

[2] In granting the said injunction against the appellants, the learned judge in the court below had failed to take into account a most relevant consideration, namely, that the respondent's action, even if successful, could entirely be satisfied by an award of damages. (p 344 a-f)

[Appeals allowed; injunction dissolved.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu pertama, sebuah perbadanan milik Kerajaan Negeri, telah memeterai satu perjanjian usahasama dengan responden ('JV1') bagi membangunkan hartanah yang dimiliki oleh perayu pertama kepada satu taman perumahan. Matlamat JV1 adalah supaya kedua-dua pihak berkongsi keuntungan dari penjualan rumah-rumah yang akan dibina. Pertelingkahan bagaimanapun timbul di antara kedua-dua pihak, dan berikutnya perayu pertama melantik perayu kedua, di bawah satu perjanjian usahasama yang baru ('JV2'), untuk meneruskan pembangunan projek. Merasa terkilan, responden memfail tindakan di Mahkamah Tinggi terhadap perayu pertama dan kedua, menuntut, antara lain, pelaksanaan spesifik JV1. Sementara menunggu perbicaraan, responden memohon dan memperoleh injunksi interlokutori terhadap perayu-perayu. Rayuan semasa oleh perayu-perayu adalah terhadap pemberian injunksi tersebut.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Secara *prima facie*, JV2 tidak boleh diketepikan kalaupun ia merupakan suatu konspirasi untuk mencederakan responden seperti yang ditohmahkan. Konspirasi adalah satu 'actionable tort' dan remedinya adalah gantirugi. Kecuali terdapat keadaan-keadaan luar biasa, sesebuah mahkamah ekuiti umumnya tidak akan memberi pelaksanaan spesifik di mana pampasan kewangan merupakan remedi yang mencukupi. Lagipun, JV1 bukanlah satu perjanjian yang membangkitkan satu kepentingan berkaveat pada tanah.

[2] Dalam mengenakan injunksi berkenaan terhadap perayu-perayu, hakim mahkamah di bawah yang bijaksana gagal mengambilkira satu pertimbangan yang amat relevan, iaitu, bahawa tindakan responden, walaupun berjaya, boleh dipampas sepenuhnya dengan award gantirugi.

Rayuan dibenarkan; injunksi dihapuskan.]

Case(s) referred to:

Lian Keow Sdn Bhd & Anor v. Overseas Credit Finance (M) Bhd & Ors [1982] CLJ 350; [1982] CLJ (Rep) 182 FC ***(refd)***

Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor [1984] 2 MLJ 105 ***(refd)***

Lonrho Ltd & Anor v. Shell Petroleum Co Ltd & Anor (No 2) [1982] AC 173 ***(refd)***

Syarikat Bunga Raya Timor Jauh Sdn Bhd & Anor v. Tractors Malaysia Bhd [1980] 2 MLJ 127 ***(refd)***

Wong Kuan Tan v. Gambut Development Sdn Bhd [1984] 2 CLJ 26; [1984] 1 CLJ (Rep) 441 FC ***(refd)***

Legislation referred to:

Specific Relief Act 1950, s. 11(2)

(Civil Appeal No: W-02-864-2002)

For the appellants - Jamaludin Ibrahim; M/s Jamaludin Ibrahim & Co

For the 1st respondent - Jasvinjit Singh; M/s AJ Ariffin, Yeo & Harpal

For the 2nd respondent - Maidzuara Mohammed (Wong Guo Bin); M/s Logan Sabapathy & Co

(Civil Appeal No: W-02-852-2002)

For the appellant - Maidzuara Mohammed (Wong Guo Bin); Logan Sabapathy & Co

For the respondents - Jasvinjit Singh; M/s AJ Ariffin, Yeo & Harpal

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S6-21-95-2002]

Reported by Gan Peng Chiang

JUDGMENT
(Oral)

Gopal Sri Ram JCA (delivering the judgment of the court):

This is the judgment of the Court.

Yesterday, these two motions came before us asking for a stay. The first motion is filed in Civil Appeal No. W-02-864-2002. The second is in Civil Appeal No. W-02-852-2002. For convenience, we will collectively refer to the appellants in Civil Appeal No. W-02-864-2002 as the first appellant and the appellant in Civil Appeal No. W-02-852-2002 as the second appellant. The respondent, common to both appeals, is Metroway Sdn Bhd.

Now, when these two motions were called on for hearing yesterday, it occurred to us that the point for decision being a short one, it would be far more convenient, and the interests of justice served better, if we were to treat these motions as the appeals proper and dispose of them on their merits. We have ample jurisdiction to do this. See *Syarikat Bunga Raya Timor Jauh Sdn Bhd & Anor v. Tractors Malaysia Bhd* [1980] 2 MLJ 127 per Chang Min Tat FJ.

In response to our suggestion in the foregoing terms, counsel for the respondent asked for time until this morning to take instructions on his client's willingness to treat these motions as the appeals proper. We accordingly adjourned these motions to today. On being called, counsel for the respondent very properly informed this court that he had his client's instructions to consent to these motions being treated as the appeals proper.

The facts of this case fall within a narrow compass. The first appellant, Perbadanan Setiausaha Kerajaan Selangor is a corporation incorporated pursuant to a State enactment. It entered into a joint venture agreement with the respondent for the purpose of developing certain lands belonging to it. The object of the agreement, it is common ground, was to share the proceeds from the sale of houses that were to be constructed on the land in question. Later, disputes arose between the parties. It appears from the written evidence thus far filed that the first appellant was unhappy with the respondent and that it therefore appointed the second appellant under a new joint venture agreement for purposes of carrying out the development.

The respondent then instituted proceedings in the Kuala Lumpur High Court against the first and second appellants now before us and sought specific performance of the agreement it had with the first appellant. Pending trial, it sought and obtained an interlocutory injunction against the first and second appellants. The present appeals are directed against the grant of that injunction.

Having formed the preliminary view that these appeals had merit, we called upon learned counsel for the respondent to argue why the appeals should not be allowed and to support the learned judge's order. Having heard learned counsel for the respondent, we are satisfied that the preliminary view we formed is correct.

It was argued for the respondent that this is a suitable case for specific relief because the agreement between the first appellant and the second appellant was the product of a conspiracy between them directed at injuring the respondent. Learned counsel for the respondent argued that in consequence of the said conspiracy, the said agreement (for that is what we will call the agreement entered into inter se the appellants) was liable to be set aside by a court. With respect, we do not agree. It is settled law that conspiracy is an actionable tort, the remedy for which is damages. See *Lonrho Ltd. & Anor v. Shell Petroleum Co. Ltd. & Anor (No. 2)* [1982] AC 173. The tort has been held to be actionable in our jurisdiction in at least one (1) case. See *Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor* [1984] 2 MLJ 105 per Wan Suleiman FJ.

Now, it is settled principle that specific relief is generally declined by a Court of Equity where monetary compensation is an adequate remedy. In the context of the remedy of specific performance, that principle finds statutory expression in s. 11(2) of the Specific Relief Act 1950.

Learned counsel for the respondent very frankly concedes that an award of damages is the appropriate remedy in the present case. That being so, discretion should *prima facie* be exercised against the respondent in the present instance unless there are very exceptional circumstances taking the case the other way. Having scrutinised the matters before us with care, we came to the conclusion that there are no exceptional circumstances. Accordingly, the present appeals fall within the general principle alluded to a moment ago.

We are satisfied that if the learned judge had properly directed himself, he would not have exercised his discretion in the way in which he did. This is not a case of an agreement conferring interest in land. Learned counsel for the respondent frankly concedes that his client could not have entered a caveat on the strength of the agreement they had with the first appellant. He is entirely correct in the concession that he made. It is established by authority that a joint venture agreement to develop land and to share proceeds of the development does not confer a caveatable interest even if the agreement itself expressly provides for entry of a caveat. See *Wong Kuan Tan v. Gambut Development Sdn Bhd* [1984] 2 CLJ 26; [1984] 1 CLJ (Rep) 441 per Hashim Yeop A Sani SCJ.

For the reasons we have already given, this is an appropriate case for appellate intervention. The principles governing intervention in a case such as the present are set out in the judgment of Salleh Abas FJ in *Lian Keow Sdn Bhd & Anor v. Overseas Credit Finance (M) Bhd & Ors* [1982] CLJ 350; [1982] CLJ (Rep) 182. By way of reminder, we reproduce the relevant passage of his lordship's judgment below:

> Although the function of an appellate court with regard to the exercise of discretion by a judge in granting or refusing an interlocutory injunction is one of review only and we must defer to the judge's decision in the matter, we however feel justified in this case in overruling the decision of the court below because we are of the opinion that the learned judge's exercise of discretion in setting aside the interlocutory injunction and order previously made by Anuar J was based upon a misunderstanding of the law and the facts before him (see Lord Diplock in *Hadmor Productions Ltd. & Ors. v. Hamilton & Anor* [1982] 2 WLR 322, 325).

Applying the foregoing passage to the present appeals, we are satisfied that this is a case where the learned judge failed to take into account a most relevant consideration, namely, that the respondent's case, even if proved, may be entirely satisfied by an award of damages.

It follows that the order made by the learned judge cannot stand. The appeals herein are therefore allowed. The order of the learned judge is set aside. The injunction against the first and second appellants are dissolved forthwith. The costs of these appeals and those incurred in the Court below shall be taxed and paid by the respondent to the appellants forthwith. Each party shall be entitled to present its own bill and claim its own separate getting-up. There being no undertaking as to damages contained in the order, the appellants are at liberty to make the appropriate application to the High Court. The deposit in each appeal is to be refunded to the first and second appellants respectively.

In conclusion, we would like to thank counsel on both sides for the assistance they have rendered us but for which assistance this *ex tempore* judgment could not have been rendered.